

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

MAR 2 2016

OFFICE OF
MANAGING DIRECTOR

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1850 M Street, NW, Suite 240
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Licensee/Applicant: **Front Range Sports Network, LLC**

Deferral and Waiver of Regulatory Fees, Financial Hardship

Disposition: **Dismissed and Denied** (47 U.S.C. § 159; 47 C.F.R. §§ 0.401, 1.7, and 1.1166)

Station(s): KJAC-FM and KJAC-FM1

Fee: Fiscal Year (FY) 2015 Regulatory Fees

Date Request Submitted: Sep. 24, 2015

Date Regulatory Fee Paid: Delinquent

Fee Control No.: RROG 15-00016066

Amount Due: ***Delinquent Debt; see Fee Filer***

Dear Counsel:

This responds to Licensee's *Requests*¹ for deferral and waiver of payment of the required Fiscal Year (FY) 2015 regulatory fees due for Stations KJAC-FM, and KJAC-FM1. As we discuss below, Licensee's submission fails to comply with Commission procedures that require an applicant seeking a waiver without first paying the fee to file with the Office of the Secretary both a petition to defer payment, with supporting documentation, and an application for a waiver. Because Licensee did not file the *Requests* with the Secretary, and it did not file a separate petition to defer payment, we dismiss the submission. In the alternative, Licensee fails to demonstrate for each submission good cause and that the public interest will be served. On that ground, we deny. Because we dismiss and deny the petition for deferral, and Licensee did not pay the fees, Licensee was delinquent on the due date. Consequently, we assess the statutory penalty of 25% of the unpaid amount, and the debt collection charges required by 31 U.S.C. § 3717. This is a demand for payment of a delinquent debt and notice that Licensee is red lighted.

¹ Letter from Aaron Shainis, Esq., Shainis & Peltzman, Chtd., Suite 240, 1850 M Street, N.W., Washington, D.C. 20036 to Federal Communications Commission, Office of the Managing Director, 445 12th St., S.W., Rm 1-A625, Washington, D.C. 20554 (Sep. 24, 2015) (*Letter Request*); Letter from Aaron Shainis, Esq., Shainis & Peltzman, Chtd., Suite 240, 1850 M Street, N.W., Washington, D.C. 20036 to Federal Communications Commission, Office of the Managing Director, 445 12th St., S.W., Rm 1-A625, Washington, D.C. 20554 (Sep. 24, 2015) (*Waiver Request*) with IRS Form 8879-PE, IRS e-file Signature Authorization for Form 1965 (dated 03/01/15); IRS Form 1065, U.S. Return of Partnership Income, Front Range Sports Network, LLC (*IRS 1065*); IRS Form 1125-A, Cost of Goods Sold (*IRS 1125-A*); Form 1065, Statements 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11 (*1065 Statements*); Front Range Sports Network, Profit & Loss-Monthly, Jan. through Aug. 2015 (*2015 P&L*).

Background

On September 24, 2015, Licensee submitted in the *Letter Request* an explanation that it “is concurrently filing a request of waiver of regulatory fees. That submission clearly demonstrates the inability ... to pay ... Accordingly, [Licensee] also requests deferment of payment of the fees while the Commission considers the Request for Waiver.”² Licensee also submitted the *Waiver Request* with attachments that include Licensee’s IRS 1065, IRS 1125-A, 1065 Statements, and the 2015 P&L.³ Licensee’s tax return information and the 2015 P&L report partnership income loss for the tax year 2014, and 8 months of calendar year 2015.

Licensee requests that the Commission waive “its obligation to pay regulatory fees due September 24, 2015 ... for the reason of inability to pay.”⁴ Licensee refers to “Implementation of Section 9 of the Communications Act, 9 FCC Rcd 5333, 5345-46 (1994), *recon. granted* 10 FCC Rcd 12759 (1995)” as support for its assertion that “in certain instances, payment of a regulatory fee may impose an undue financial hardship upon a licensee. In such cases, the Commission considers a licensee’s cash flow, as opposed to the entity’s profits, to determine whether the station lacks sufficient funds to pay the regulatory fee and maintain service to the public.”⁵ Continuing, Licensee asserts in the Waiver Request that its “2014 tax return ... demonstrates a loss [and] a profit and loss statement from January through August 2015, demonstrat[es] a loss”⁶

Standards

Licensees are expected to know the Commission’s rules and procedures⁷ for paying the annual regulatory fees, filing a timely and complete petition to defer payment, and filing a request for waiver. Also, Licensees are expected to know the consequences of failing to pay an annual regulatory fee in a timely manner.

In establishing the regulatory fee program mandated by Congress,⁸ the Commission set out the relevant schedules of the annual fees and established procedures for, among other matters, payment, waivers, reductions, and deferral, refunds, error claims, and penalties.⁹

The Commission’s rules at 47 C.F.R. §§ 0.401, 1.7, and 1.1166 establish the proper locations and procedures for filing waiver requests and petitioning for deferral and the consequence of dismissal for failing to comply with those rules. The Commission has designated specific offices to receive and process certain matters, thus a request for relief is *filed* upon receipt at the location designated by the Commission.¹⁰ Under section 1.1166 of the

² *Letter Request*.

³ *Waiver Request*.

⁴ *Id.* at 1.

⁵ *Id.*

⁶ *Id.*

⁷ 47 C.F.R. § 0.406; see *Life on the Way Communications, Inc., Forfeiture Order* 30 FCC Rcd 2603, 2607 (2015).

⁸ See 47 C.F.R. § 1.1151.

⁹ See 47 C.F.R. Part 1, Subpart G.

¹⁰ 47 C.F.R. §§ 0.401 (“The Commission maintains several offices and receipt locations. Applications and other filings not submitted in accordance with the addresses or locations ... will be returned to the applicant without

Commission's rules, a petition to waive a regulatory fee "must be accompanied by the required fee and FCC Form."¹¹ If the applicant includes the fee, the request must be submitted to the Commission's lockbox bank.¹² Waiver requests that do not include the required fees or form will be dismissed unless accompanied by a separate petition to defer payment due to financial hardship, supported by documentation of the financial hardship.¹³ "If no fee payment is submitted, the request should be filed with the Commission's Secretary."¹⁴ Filing is accomplished by mailing or otherwise delivering a hard copy of the documents to Office of the Secretary, Federal Communications Commission, Attention: Managing Director, Washington, D.C. 20554.

The Commission recognizes that in certain instances, payment of a regulatory fee may impose an undue financial hardship upon a licensee, and it may be waived, reduced, or deferred upon a showing of *good cause*¹⁵ and a finding that the *public interest will be served thereby*.¹⁶ The applicant has the burden of demonstrating relief is warranted,¹⁷ i.e., that special circumstances warrant a deviation from the general rule to collect the regulatory fee, and that the deviation will serve the public interest.¹⁸ Under 47 C.F.R. § 1.1166,

The fees ... may be waived, reduced or deferred in specific instances, on a case-by-case basis, where good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest. ... (a) ... All such filings within the scope of the fee rules shall be filed as a separate pleading and clearly marked to the attention of the Managing Director. Any such request that is not filed as a separate pleading will not be considered by the Commission.

An applicant must show extraordinary and compelling circumstances that outweigh the public interest in recouping the Commission's regulatory costs.¹⁹ A "sufficient showing of

processing."); 1.7 ("pleadings and other documents are considered to be filed with the Commission upon their receipt at the location designated by the Commission."); *Champion Communication Services, Inc., Order on Reconsideration*, 15 FCC Rcd 23782, 23783-84 (WTB 2000).

¹¹ 47 C.F.R. § 1.1166(c).

¹² 47 C.F.R. § 1.1166(a)(1).

¹³ 47 C.F.R. § 1.1166(b); *Assessment and Collection of Regulatory Fees For Fiscal Year 2011, Report and Order*, 26 FCC Rcd 10812, 10819, ¶ 17 (2011) ("A regulatee's mere allegation of financial hardship thus does not automatically entitle it to a deferral of its obligation to pay regulatory fees; only a properly supported claim of financial hardship will entitle the regulatee to a deferral. Accordingly, if a request for deferral is not supported by documentation of financial hardship, it will be denied, and an associated petition for waiver or reduction will be dismissed. A regulatee cannot delay payment on the theory that its deferral request triggered an automatic six-month extension of its obligation to pay.").

¹⁴ 47 C.F.R. § 1.1166(a)(2).

¹⁵ 47 C.F.R. § 1.3.

¹⁶ 47 U.S.C. § 159(d); 47 C.F.R. § 1.1166 ("The fees ... may be waived, reduced or deferred in specific instances, on a case-by-case basis, where good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest."). See also Implementation of Section 9 of the Communications Act, *Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, Report and Order*, 9 FCC Rcd 5333, 5344 (1994), *recon. granted in part*, 10 FCC Rcd 12759 (1995) (*1994 Report and Order*); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

¹⁷ *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

¹⁸ *Northeast Cellular*, 897 F.2d at 1166.

¹⁹ *1994 Report and Order*, 9 FCC Rcd at 5344 ¶ 29; *Phoenix Broadcasting, Inc. Stations KSWD and KPFN Seward, Alaska, Memorandum Opinion and Order*, 18 FCC Rcd 26464, 26446, ¶¶ 5-6 (2003) ("Fee relief may be granted

financial hardship”²⁰ is more than “[m]ere allegations or documentation of financial loss, standing alone. Rather, [the Commission may] grant a waiver only when the impact of the regulatory fee will affect a regulatee’s ability to serve the public. It [is] incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fee and to maintain its service to the public.”²¹ The relevant financial documents include the licensee’s balance sheet and profit and loss statement (audited, if available), a cash flow projection for the next twelve months (with an explanation of how calculated), a list of the licensee’s officers and their individual compensation, together with a list of their highest paid employees, other than officers, and the amount of their compensation, or similar information. On this information, the Commission considers on a case-by-case basis whether the licensee met the standard to show the station lacks sufficient funds to pay the regulatory fee and maintain service to the public.²²

Discussion

“A regulatee’s mere allegation of financial hardship thus does not automatically entitle it to a deferral of its obligation to pay regulatory fees; only a properly supported claim of financial hardship will entitle the regulatee to a deferral. Accordingly, if a request for deferral is not supported by documentation of financial hardship, it will be denied, and an associated petition for waiver or reduction will be dismissed. A regulatee cannot delay payment on the theory that its deferral request triggered an automatic six-month extension of its obligation to pay.”²³

On September 14, 2015, and for several years before, the Commission published *Procedures for Filing Waivers, Reductions and Deferments of Regulatory Fees*,²⁴ which provided,

Under 47 U.S.C. 159(d) and 47 C.F.R. § 1.1166, the Commission may waive, reduce, or defer payment of a fee in specific instances, on a case-by-case basis, where good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest. Licensees requesting a waiver or reduction must demonstrate both of those required elements, and licensee either must pay the full fee or submit with the request a separate petition to defer payment due to financial hardship that is fully supported by the required documentation of the financial hardship. If the licensee pays the fee, and the Commission grants the

based on asserted financial hardship, but only upon a documented showing that payment of the fee will adversely impact the licensee’s ability to serve the public. ... [I]n the absence of a documented showing of insufficient funds to pay the regulatory fees, [applicant] has not made a compelling showing that overrides the public interest in the Commission’s recouping the costs of its regulatory activities.”).

²⁰ Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, *Memorandum Opinion and Order*, 10 FCC Rcd 12759, 12761-62, ¶ 13 (1995) (FY 1994 MO&O).

²¹ *Id.*

²² *Id.*

²³ Assessment and Collection of Regulatory Fees for Fiscal Year 2011, *Report and Order*, 26 FCC Rcd 10812, 10819, ¶17 (2011).

²⁴ *Procedures for Filing Waivers, Reductions and Deferments of Regulatory Fees*, FCC (Sep. 14, 2015) 2015 WL 5405041 (F.C.C.). See also *Procedures for Filing Waivers, Reductions and Deferments of Regulatory Fees*, FCC (Sep. 10, 2014) 2014 WL 4460322 (F.C.C.), *Procedures for Filing Waivers, Reductions and Deferments of Regulatory Fees*, FCC (Sep. 5, 2013) 2013 WL 4773993 (F.C.C.)

request, the Commission will refund the appropriate amount. The Commission will dismiss any request to waive or reduce a regulatory fee that does not include full payment or the required separate petition for deferral with supporting documentation, and under 47 U.S.C. 159(c) and 31 U.S.C. 3717, the Commission is required to impose the 25% penalty and other relevant charges. A request for waiver, reduction or deferral must be received before the fee due date. A request for a waiver or reduction in fees must be accompanied by a fee payment by the due date. If the licensee does not pay the fee, but includes a petition to defer payment, licensee must file both the request and separate petition to defer payment with the Commission's Secretary, along with the required supporting financial documentation. Submissions sent to other locations or directly to Commission staff may be dismissed. For example, a request sent by email to the Help Desk is improper, and it is not considered filed, and if the fee is unpaid, the unpaid fee amount is deemed delinquent, resulting in accrual of additional charges from the date of delinquency. Furthermore, the Commission will dismiss a waiver request filed by a delinquent debtor or a petition that does not have the required financial documentation.

Notwithstanding these admonishments, Licensee submitted directly to the Office of the Managing Director at Room 1-A625 the *Letter Request* without any supporting documentation and the *Waiver Letter* with some financial information in the form of a partnership tax return and a partnership profit and loss statement. Notably missing from the submission is the necessary separate petition to defer payment with supporting documentation. Licensee instead asserted in the *Letter Request* it "is concurrently filing a request of waiver of regulatory fees," and opined that the "submission clearly demonstrates the inability ... to pay." This *Letter Request* is not a petition and it fails to provide adequate information from which the Commission determines whether an applicant demonstrated for a petition to defer payment of the fee *both good cause* and that the *public interest is served*.²⁵ Hence, Licensee's submission fails to meet the established standards necessary to complete the filing with the Commission and to submit a proper separate petition to defer payment supported with financial documentation of financial hardship. Hence, under 47 C.F.R. §§ 0.401, 1.7, and 1.1166,²⁶ we first dismiss the submission because it is not filed, and second, as a separate matter, we dismiss the submission because Licensee did not file a separate petition to defer payment.²⁷ Because Licensee did not file a petition to defer payment, and it did not pay the required fee on September 24, 2015, the fee is delinquent, the statutory 25% penalty automatically accrued,²⁸ and charges provided for at 31 U.S.C. § 3717 accrued from

²⁵ 47 U.S.C. § 159(d); 47 C.F.R. § 1.1166.

²⁶ 47 C.F.R. § 1.1166(a) ("Requests for waivers ... or deferrals will be acted upon by the Managing Director with the concurrence of the General Counsel. All such filings within the scope of the fee rules shall be filed as a separate pleading and clearly marked to the attention of the Managing Director. Any such request that is not filed as a separate pleading will not be considered by the Commission.").

²⁷ 47 C.F.R. § 1.1166(c) ("Waiver requests that do not include the required fees or forms will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship."); Assessment and Collection of Regulatory Fees for Fiscal Year 2011, *Report and Order*, 26 FCC Rcd 10812, 10819, ¶17 (2011) ("Accordingly, if a request for deferral is not supported by documentation of financial hardship, it will be denied, and an associated petition for waiver or reduction will be dismissed.").

²⁸ 47 U.S.C. § 159(c)(1); 47 C.F.R. §§ 1.1164; Assessment and Collection of Regulatory Fees for Fiscal Year 2011, *Report and Order*, 26 FCC Rcd 10812, 10819, ¶17 (2011) ("Accordingly, if a request for deferral is not supported by documentation of financial hardship, it will be denied, and an associated petition for waiver or reduction will be

that date. This resolves the matter; however, as a matter of administrative economy we looked to the submission, and for the following reasons we deny the *Requests*.

Each licensee has the burden of demonstrating compelling and extraordinary circumstances that a waiver and a petition for deferral would override the public interest, as determined by Congress, that the government should be reimbursed for the Commission's regulatory action.²⁹ To make a case, the licensee must "fully document its financial position and show that it lacks sufficient funds to pay the regulatory fee and to maintain its service to the public."³⁰ The requirement to fully document its financial position means that the licensee must present "relevant financial documents [to] include the licensee's balance sheet and profit and loss statement (audited, if available), a cash flow projection for the next twelve months (with an explanation of how calculated), a list of the licensee's officers and their individual compensation, together with a list of their highest paid employees, other than officers, and the amount of their compensation, or similar information. On this information, the Commission considers on a case-by-case basis whether the licensee met the standard to show the station lacks sufficient funds to pay the regulatory fee and maintain service to the public."³¹

Rather than meet the elements of that standard, Licensee points to *1994 Report and Order* and *1994 MO&O* for support to assert, the Commission will consider "a licensee's cash flow as opposed to the entity's profits, to determine whether the station lacks sufficient funds to pay the regulatory fee and maintain service to the public."³² This does not faithfully summarize the Commission's *1994 MO&O*, and Licensee does not sustain its burden. First, Licensee fails to recognize the balance of the Commission's standard that the applicant must "fully document its financial position and show that it lacks sufficient funds to pay the regulatory fees and to maintain service to the public."³³ Next, in the context of the true standard, Licensee's partnership "2014 tax return" and "profit and loss statement" do not fully document its financial position. Licensee does not include the stations' balance sheets, profit and loss statements (audited, if available), cash flow projections for the next twelve months (with an explanation of how calculated), the list of the licensee's officers and their individual compensation. Third, Licensee undermines its position by furnishing a profit and loss statement even after acknowledging such information is less significant than a "cash flow," which Licensee failed to include. Fourth, Licensee presents documentation showing the partnership experienced business income loss for income tax purposes, not that it lacks funds to pay the regulatory fee. Fifth, Licensee fails to show that it lacks sufficient funds to pay the regulatory fee *and* to maintain service to the public. Finally, Licensee fails to establish for the petition to defer payment and for the *Waiver Request* both *good cause* and that the *public interest is served* in deferring payment and in granting the waiver.

dismissed.") ; Procedures for Filing Waivers, Reductions and Deferrals of Regulatory Fees, FCC (Sep. 14, 2015) 2015 WL 5405041 (F.C.C.) ("The Commission will dismiss any request to waive or reduce a regulatory fee that does not include full payment or the required separate petition for deferral with supporting documentation, and under 47 U.S.C. 159(c) and 31 U.S.C. 3717, the Commission is required to impose the 25% penalty and other relevant charges.").

²⁹ *Id.*, *1994 Report and Order*, 9 FCC Rcd at 5344.

³⁰ *Id.*

³¹ *1994 MO&O*, 10 FCC Rcd at 12761-62, ¶ 13.

³² *Waiver Request* at 1.

³³ *1994 MO&O*, 10 FCC Rcd at 12762, ¶ 13.

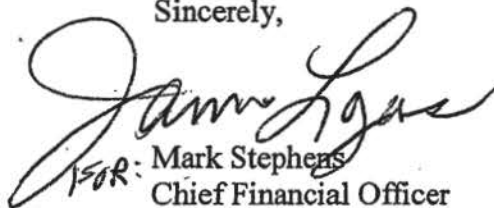
Simply, Licensee's information does not show compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission's regulatory costs. Hence, we deny the *Requests*.³⁴

Payment of the delinquent FY 2015 regulatory fee is due immediately. This is a demand for payment of a delinquent debt that includes the FY 2015 regulatory fee, the statutory 25% penalty,³⁵ and charges provided for under 31 U.S.C. § 3717.

Licensee is delinquent in paying a debt owed the United States. This demand letter provides notification that under 31 U.S.C. § 3711(g), without further notice, and usually within 120 days or less of the date of delinquency, we will transfer the delinquent debt to Treasury, which will initiate collection action through private collection activities and assess additional charges. In addition, we may refer the debt to the Department of Justice, which may result in litigation and additional costs. Moreover, under 31 U.S.C. § 3716, 31 C.F.R. § 285.5, and 47 C.F.R. § 1.1912, some or all of the debt may be collected by non-centralized or centralized administrative offset. Also, under 31 U.S.C. § 3711(e), this debt and Licensee's payment history will be reported to credit reporting information bureaus. Because we have furnished notice here, Licensee may not receive another notification of this process. Finally, Licensee is red lighted³⁶ until it pays all delinquent debts or it makes other satisfactory arrangements.³⁷

If you have any questions concerning this letter, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,


FOR: Mark Stephens
Chief Financial Officer

³⁴ Phoenix Broadcasting, Inc. Stations KSWD and KPFN Seward, Alaska, *Memorandum Opinion and Order*, 18 FCC Rcd 26464, 26446, ¶¶ 5-6 (2003).

³⁵ 47 U.S.C. § 159(c)(1).

³⁶ See 47 C.F.R. § 1.1910(b)(2) ("Action will be withheld on applications, including on a petition for reconsideration or any application for review of a fee determination, or request for authorization by any entity found to be delinquent in its debt to the Commission ..."); 47 C.F.R. § 1.1164(e) ("Any pending or subsequently filed application submitted by a party will be dismissed if that party is determined to be delinquent in paying a standard regulatory fee or an installment payment.").

³⁷ See 47 C.F.R. § 1.1914 ("If a debtor is financially unable to pay a debt in one lump sum, the Commission, in its sole discretion, may accept payment in regular installments.").